HOUSE No. 4803

Substituted, on motion of Mr. Pedone of Worcester, for a bill with the same title (House, No. 4496). June 23, 2010.

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act relative to time-share ownership.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 2 of chapter 183B of the General Laws, as appearing in the 2008 Official Edition, is
- 2 hereby amended by inserting after the definition of "Exchange program" the following 4 definitions:-
- 3 "Forfeiture", full termination of any and all rights at law or in equity of a time-share owner, and of the
- 4 heirs, executors, administrators, successors or assigns of the time-share owner in or arising out of the
- 5 ownership of a time-share estate or a time-share license, including all rights of redemption or any other
- 6 rights to cure.
- 7 "Forfeiture proceedings", shall include the process of terminating or foreclosing the rights of a time-share
- 8 owner, or exercising rights of a secured party, under a mortgage, trust deed or other security instrument
- 9 which encumbers a time-share pursuant to section 29A, or the process of foreclosing a lien for
- assessments on a time-share pursuant to section 29 or section 29B, or both.
- "Recorded", recorded or filed in the registry of deeds or land registration office for the county or registry
- district where the property is located.
- 13 "Registry of deeds", the registry of deeds or land registration office for the county or registry district
- where the property is located.

- 15 SECTION 2. Said section 2 of said chapter 183B, as so appearing, is hereby further amended by striking
- out the definition of "Time-share instrument" and inserting in place thereof the following definition:-
- 17 "Time-share instrument", one or more documents, by whatever name denominated, creating or governing
- 18 time-shares, including without limitation, a declaration or plan establishing a time-share regime, articles
- of organization and by-laws of a time-share association, rules and regulations, offering materials, sales
- documents, and instruments of conveyance or transfer.
- 21 SECTION 3. Subsection (a) of section 20 of said chapter 183B, as so appearing, is hereby amended by
- striking out clause (8) and inserting in place thereof the following clause:-
- 23 (8) impose charges for late payment of assessments; and after notice and an opportunity to be heard, levy
- 24 reasonable fines for violations of the time-share instrument, by-laws, and rules and regulations of the
- association; and assess the reasonable legal fees and collection agency fees incurred by the association in
- 26 collection of such assessments and fines and the institution of forfeiture proceedings.
- 27 SECTION 4. Said chapter 183B is hereby further amended by striking out section 29, as so appearing,
- and inserting in place thereof the following section:-
- 29 Section 29. (a) A person who has a duty to make assessments for time-share expenses shall have a lien on
- a time-share for any assessment levied against that time-share or fines imposed against its owner from the
- 31 time the assessment or fine becomes due. In the case of either a time-share estate or a time-share license,
- 32 the lien shall be enforced pursuant to section 29B. Unless the time-share instrument otherwise provides,
- fees, charges, late charges, fines, interest, collection agency fees and reasonable attorney's fees charged
- pursuant to clauses (8) and (9) of subsection (a) of section 20 shall be enforceable as assessments under
- 35 this section. If an assessment is payable in installments, the full amount of the assessment shall be a lien
- 36 from the time the first installment thereof becomes due.
- 37 (b) A lien created under this section shall be prior to all other liens and encumbrances on a time-share
- 38 except: (i) liens and encumbrances recorded before the recording of the time-share instrument; (ii)
- 39 mortgages or security interests on the time-share recorded before the due date of the assessment or the
- 40 due date of the first installment payable on the assessment; and (iii) liens for real estate taxes and other
- 41 governmental assessments or charges against the time-share. This subsection shall not affect the priority
- 42 of mechanics' or materialmen's liens. The lien under this section shall not be subject to chapter 188.
- 43 (c) The lien created under this section shall be automatic as a matter of law, but a claim or notice of lien
- 44 may be recorded in the applicable registry of deeds for a time-share estate or as required in the controlling
- 45 time-share instruments for a time-share. A lien shall be dissolved upon the issuance and recording of a
- statement by the association pursuant to subsection (e) showing no assessment to be due and owing.

- 47 (d) This section shall not prohibit actions to recover sums for which subsection (a) creates a lien or
- precludes an association from recourse by any contractual or other remedy permitted by law.
- 49 (e) The lien created under this section shall include costs, including collection agency fees, reasonable
- attorneys' fees and all forfeiture costs incurred by the association. A person who has a duty to make
- assessments for time-share expenses shall furnish to a time-share owner, purchaser, mortgagee or a
- 52 closing attorney or settlement agent, upon written request, a statement recordable in form setting forth the
- amount of unpaid assessments currently levied against his or her time-share. Said person may charge a
- reasonable fee for the preparation of the statement. The statement shall be furnished within 10 business
- days after the receipt of the request. Any time-share owner, purchaser, mortgagee, or a closing attorney
- or settlement agent, who is a recipient of the statement shall be entitled to rely on its contents, and the
- 57 person who has delivered the statement may collect only the sums of money set forth therein from the
- recipient; provided, however, that the recipient pays any amounts stated as due and owing and any
- amounts which subsequently may become due and owing within 60 days of the date of the statement,
- 60 including collection charges, late fees, interest and additional assessments as stated therein.
- 61 (f) No time-share owner may exempt himself or herself from liability for his or her contribution toward
- 62 the time-share liability expenses by waiver of the use or enjoyment of any of the common areas and
- facilities or by abandonment of the time-share or otherwise; and no time-share owner shall be entitled to
- an offset, deduction or waiver of time-share liability expenses or other charges levied or lawfully assessed
- by the association.
- SECTION 5. Said chapter 183B is hereby further amended by inserting after section 29 the following 2
- 67 sections:-
- 68 Section 29A. The rights of a time-share owner shall be subject to forfeiture in the following manner for
- 69 breach of condition of any mortgage, which for the purpose of this section shall include any security
- 70 instrument such as a mortgage, trust deed or other similar instrument encumbering a time-share:
- 71 (a) Upon default, and after all applicable cure periods have expired, the holder of a mortgage shall
- 72 provide written notice of default to the time-share owner at his or her last known address by certified and
- first class mail and provide a reasonable opportunity to cure of not less than 90 days from the date of the
- 74 mailing of the notice letter.
- 75 (b) Prior to offering a time-share for sale for breach of condition of a mortgage, the holder thereof shall
- attempt in good faith and with reasonable precaution, which for the purpose of this section shall not
- 77 require separate proceedings under section 57 of the acts of 1943, to determine whether any person
- 78 subject to forfeiture proceedings under this section is entitled to protection under the Service members
- 79 Civil Relief Act of 2003, 50 U.S.C. App. Sec. 517, hereinafter referred to as "SCRA".

- 80 (c) Nothing herein contained shall prevent a holder of a mortgage from seeking a determination under
- section 57 of the acts of 1943 that a time-share owner is not entitled to benefits under SCRA or, if a time-
- share owner is entitled to the benefits under SCRA, a determination of said time-share owner's rights
- under SCRA.
- 84 (d) With respect to forfeiture proceedings based upon breach of condition of a security instrument
- 85 encumbering a time-share license, the holder of same shall have the option of; (i) foreclosing in the
- 86 manner prescribed in the time-share instrument or, if not prescribed, in accordance with this section; or
- 87 (ii) by public or private sale conducted in accordance with the provisions of part 6 of article 9 of chapter
- 88 106 of the General Laws, the Massachusetts Uniform Commercial Code.
- 89 (e) If, after expiration of the 90-day period, the time-share owner has not cured said default in the manner
- 90 prescribed and the holder of the mortgage has determined in good faith and with reasonable precaution
- 91 that the time-share owner is not entitled to protection under SCRA, the holder of the mortgage shall
- 92 conduct a public auction sale under the following conditions:
 - (1) Notice:

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

- (i) Notice of such sale shall be published once in a public newspaper with a general circulation in the town or county in which the time-share property is situated. The publication shall be not less than 30 days before the date of the sale, calculated by excluding the date of publication of the first notice and the date of sale.
- (ii) At least 30 days prior to the date of sale, a written notice of the time, date, and place of the auction shall be mailed, by certified mail and by first class mail to the last known address of the timeshare owner of record, and to the last known address of all parties having a lien or other interest of record in the time-share estate junior to the mortgage that is the subject of forfeiture proceedings.
- (iii) Such notice shall contain: the name of the time-share owner and the original mortgagee; the date and book and page or document number of the mortgage; the date, time and place of the sale; a general description of the time-share; and the terms of the sale. If more than one time-share is to be included in the sale, all such time-shares may be combined into 1 notice of sale, with 1 property description being given as set forth herein below.
 - (iv) The notice of sale pursuant to this section shall be printed in substantially the following form:
- SALE OF TIME-SHARE ESTATE UNDER M.G.L. C. 183B, SECTION 29A. By virtue of M.G.L. c.
- 109 183B, Section 29A and in execution of the Power of Sale contained in a certain Mortgage (or Mortgages,
- if more than one) on the time-share estate (or estates, if more than one) given by the time-share owner (or
- owners, if more than one) set forth below for breach of the conditions of said Mortgage and for the

112 113	purpose of foreclosing, the same will be sold at Public Auction commencing at on, 20 at, Massachusetts, being all and singular the
114	premises described in said Mortgage. (For each Mortgage, list name and address of the timeshare owner
115	and the original Mortgagee, a general description of the time-share estate and the date and book and page
116	number or document number of the Mortgage).
117	TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale
118	and the times(s) for payment of the balance or the whole as the case may be. The time share estates, if
119	more than one, may be sold in individual lots or as a group.) Other terms to be announced at the sale.
120	Signed
121	Holder of security instrument, or counsel.
122	(v) Such notice of sale substantially in the above form, published in accordance with the provisions
123	of this section, together with such other or further notice, if any, shall be deemed a sufficient notice of the
124	sale and the time-share shall be deemed to have been sold, and the instrument conveying the time-share
125	from the foreclosing entity shall transfer the time-share subject to, and with the benefit of, all restrictions,
126	easements, improvements, outstanding tax titles, municipal or other public taxes, assessments and
127	security instruments recorded prior to the mortgage that is the subject of forfeiture proceedings, whether
128	or not reference to such restrictions, easements, improvements, outstanding tax titles, municipal or other
129	public taxes, assessments, or security instruments is made in the said instrument of conveyance; but no
130	purchaser at such sale shall be bound to complete the purchase if there are encumbrances, other than those
131	included in the notice of sale, which are not stated at the sale and included in the foreclosing entity's
132	contract with the purchaser. No such notice of sale shall be held to be invalid by reason of any error or
133	irregularity which is neither substantial nor misleading.
134	(2) Conduct of Sale:
135	(i) Unless the notice of sale otherwise provides, the sale shall take place on the time-share property.
136	(ii) The sale shall be by public auction, conducted by a Massachusetts licensed auctioneer. At the
137	discretion of the auctioneer, he may dispense with the reading of the names of the time-share owners (if
138	there is more than one), the description of time-share (if there is more than one) and the recording
139	information (if there is more than one instrument).
140	(iii) All rights of redemption of the time-share owner shall be extinguished upon the sale of a time-
141	share pursuant to this section.

- (iv) The association, its manager, the holder of the mortgage, and any time-share owner may bid at the sale. The successful buyer at such sale shall take title to the time-share free and clear of any and all outstanding obligations of the prior time-share owner to the association, except that if the buyer intends to use the time-share during the same fiscal year of the association in which the time-share was purchased, the buyer shall be obligated to pay the assessment for that year.
 - (v) Upon closing, the holder of the mortgage shall provide the buyer with:
- (A) a deed or other appropriate instrument transferring the rights to the time-share;

- (B) an affidavit of sale attesting to compliance with all requirements of the forfeiture proceedings pursuant to this section and further attesting that the holder has attempted in good faith and with reasonable precaution, to determine whether any person subject to forfeiture proceedings under this section is entitled to protection under the SCRA; and
 - (C) a resale certificate as required by section 42, if requested by the buyer.
 - (vi) The buyer shall record the deed or other instrument and the affidavit of sale with the appropriate registry of deeds no more than the later of 90 days after the sale date, or 90 days after receipt of the deed from the holder of the mortgage. Upon such recording, the buyer shall be deemed to be a bona fide purchaser of such time-share and shall not be subject to claims by the prior owner thereof that the forfeiture proceedings under this section are invalid under SCRA.
 - (vii) Within 30 days after the closing and delivery of the deed or other instrument and affidavit of sale, the holder of the mortgage shall mail a notice detailing the results of the sale to the last known address of the former time-share owner and all parties which held a junior interest to that of said holder.
 - (f) In the event of a breach of the conditions of a mortgage on a time-share granted prior to the effective date of this section, the holder of the mortgage may conduct forfeiture proceedings of the interest of the time-share owner in the time-share under this section; provided, however, that if at the same time the holder gives written notice of default to the time-share owner as provided in subsection (a), the holder also gives written notice to the time-share owner stating that unless the timeshare owner objects in writing to the non-judicial forfeiture within the 90-day period required by subsection (a), it will proceed to conduct the forfeiture pursuant to this section. The holder must explain in the notice that the time-share owner has the right to a judicial foreclosure conducted pursuant to chapter 244 if the owner asserts the objection within the specified time period and must include with the notice an objection form together with an envelope addressed to the holder. Failure of a time-share owner to object in a timely manner as required by this section is deemed a waiver of the owner's right to a foreclosure pursuant to chapter 244, which may include judicial foreclosure in a court action.

174	(g) In the case of a mortgage in which the term or maturity date of the mortgage is stated, section 33 of
175	chapter 260 prohibiting the exercise of a power of sale, entry, possession or commencement of
176	foreclosure proceedings after 5 years from the expiration of the term or maturity date shall not apply to
177	forfeiture proceedings completed within 36 months of the effective date of this section or forfeiture
178	proceedings on mortgages for which an extension of the mortgage or acknowledgement or affidavit that
179	the mortgage is not satisfied pursuant to sections 33 and 34 of chapter 260 has been recorded. For the
180	purposes of this subsection, completion of forfeiture proceedings shall be deemed to have occurred upon
181	the recording of the deed and affidavit referenced in clause (vi) of paragraph (2) of subsection (e).
182	Section 29B. The rights of a time-share owner shall be subject to forfeiture in the following manner for
183	non-payment of assessments:
184	(a) Upon default in payment of assessments, and after all applicable cure periods have expired, the
185	association shall provide written notice of default in payment of assessments to the time-share owner at
186	the last known address by certified and first class mail and shall provide a reasonable opportunity to cure
187	of not less than 90 days from the date of the mailing of the notice letter.
188	(b) Prior to offering a time-share for sale for nonpayment of assessments, the association shall attempt in
189	good faith and with reasonable precaution to determine whether any person subject to forfeiture
190	proceedings under this section is entitled to protection under the Service members Civil Relief Act of
191	2003, 50 U.S.C. App. Sec. 517 ("SCRA") in the same manner as set forth in subsections (b) and (c) of
192	section 29A.

- 193 (c) With respect to forfeiture proceedings based upon nonpayment of assessments by the owner of a time-
- share license, the person or entity entitled to receive such payments shall have the option of: (i)
- foreclosing in the manner prescribed in the time-share instrument or, if not prescribed, in accordance
- with this section; or (ii) by public or private sale conducted in accordance with the provisions of part 6 of
- article 9 of chapter 106 of the General Laws, the Massachusetts Uniform Commercial Code.
- (d) If after the expiration of the 90- day period, the time-share owner has not cured said default in the
 manner prescribed and the association has determined in good faith and with reasonable precaution that
- 200 the time-share owner is not entitled to protection under SCRA, the association shall conduct a public
- auction sale under the following conditions:
 - (1) Notice:

202

203

204

(i) Notice of such sale shall be published once in a public newspaper with a general circulation in the town or county in which the time-share property is situated. The publication shall be not less than 30 days

before the date of the sale, calculated by excluding the date of publication of the first notice and the date of sale.

- (ii) At least 30 days prior to the date of sale, a written notice of the time, date, and place of the auction shall be mailed, by certified mail and first class mail, to the last known address of the time-share owner of record, and to the last known address of all parties having a lien or other interest of record in the time-share estate or time-share license that is junior to the assessment lien, and to any party holding a first mortgage or first security interest of record on said time-share estate or time-share license.
- (iii) Such notice shall contain the name of the time-share owner, the book and page or document number of the deed or other instrument evidencing said time-share owner's fee interest, lease or license, as applicable, the date, time and place of the sale, a general description of the time-share, and the terms of the sale. If more than one time-share is to be included in the sale, all such time-shares may be combined into 1 notice of sale, with 1 property description being given as set forth herein below.
- (iv) The notice of forfeiture proceedings with respect to a lien for nonpayment of assessments on a time-share estate shall be printed in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L. CHAPTER 183B,

SECTION 29B. By virtue of M.G.L. c. 183B, Section 29B and the constituent instruments of the

221 _____ (name and address of time-share property), establishing a lien pursuant to

M.G.L. c. 183B, Section 29 (a) on the time-share (or time-shares, if more than one) held by the time-share

owner (or owners, if more than one) listed below, the time-share (or time-shares, if more than one) will be

224 sold at Public Auction commencing at ______ on ______, 20__ at ______,

225 Massachusetts. (For each time-share, list name and address of the time-share owner(s), a general

description of the time-share and the book and page or document number of the deed or other instrument

evidencing said time-share owner's fee interest, lease, or license, as applicable).

- TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale,
- and the times(s) for payment of the balance or the whole as the case may be. The time-share estates, if
- 230 more than one, may be sold in individual lots or as a group.) Other terms to be announced at the sale.
- 231 Signed_____
- 232 Lienholder, or counsel.

205

206

207

208

209

210

211

212

213

214

215

216

217

218

219

226

233

234

235

236

(v) Such notice of sale substantially in the above form, published in accordance with the provisions of this section, together with such other or further notice, if any, shall be deemed a sufficient notice of the sale and the time-share shall be deemed to have been sold, and the instrument conveying the time-share from the foreclosing entity shall transfer the time-share subject to, and with the benefit of, all restrictions,

easements, improvements, outstanding tax titles, municipal or other public taxes, assessments and security instruments recorded prior to the recording of the notice of lien, whether or not reference to such restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments or security instruments is made in the said instrument of conveyance; but no purchaser at such sale shall be bound to complete the purchase if there are encumbrances, other than those included in the notice of sale, which are not stated at the sale and included in the foreclosing entity's contract with the purchaser. No such notice of sale shall be held to be invalid by reason of any error or irregularity which is neither substantial nor misleading.

(2) Conduct of Sale:

- (i) Unless the notice of sale otherwise provides, the sale shall take place on the time-share property.
- (ii) The sale shall be by public auction, conducted by a Massachusetts licensed auctioneer. At the discretion of the auctioneer, he may dispense with the reading of the names of the time-share owners if there is more than one, the description of time-share if there is more than one and the recording information if there is more than one instrument.
- (iii) All rights of redemption of the time-share owner shall be extinguished upon the sale of a time-share pursuant to this section.
- (iv) The association, its manager, and any time-share owner may bid at the sale. The successful buyer at such sale shall take title to the time-share free and clear of any and all outstanding obligations of the prior time-share owner to the association, except that if the buyer intends to use the time-share during the same fiscal year of the association in which the time-share was purchased, the buyer shall be obligated to pay the assessment for that year.
 - (v) Upon closing, the association shall provide the buyer with:
- (A) a deed or other appropriate instrument transferring the rights to the time-share;
- (B) an affidavit of sale attesting to compliance with all requirements of the forfeiture proceedings pursuant to this section and further attesting that the holder has attempted in good faith and with reasonable precaution, to determine whether any person subject to forfeiture proceedings under this section is entitled to protection under the SCRA; and
- (C) a resale certificate as required by section 42, if requested by the buyer.
 - (vi) The buyer shall record the deed or other instrument and the affidavit of sale with the appropriate registry of deeds no more than the later of 90 days after the sale date, or 90 days after the receipt of the deed from the association. Upon such recording, the buyer shall be deemed to be a bona fide purchaser of

such time-share and shall not be subject to claims by the prior owner thereof that the forfeiture proceedings under this section are invalid under SCRA.

(vii) Within 30 days after the closing and delivery of the deed or other instrument and affidavit of sale, the association shall mail a notice detailing the results of the sale to the last known address of the former time-share owner and all parties which held a junior interest to that of said holder.

SECTION 6. Section 5 of chapter 254 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 4, the words "section six of chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter one hundred and eighty-three B" and inserting in place thereof the following words:- or section 6 of chapter 183A.

SECTION 7. Upon the effective date of this act, the association shall provide notice within 60 days of the contents and intent of said legislation to the time-share owner. The entire contents of this legislation shall be summarized in said letter. The notice shall be provided by any of the following methods: (i) first class mail sent to each unit owner's address; or (ii) in the notice of an annual or special meeting of the owners; or (iii) by posting said notice on the website of the applicable time-share plan; or (iv) by any

owner communication used by the managing entity.